

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

DAVID BRIAN MORGAN, et al.,

Plaintiff,

v.

STATE OF OKLAHOMA, et al.,

Defendant.

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Case No. CV-19-929-R

ORDER

Plaintiff David Morgan, a state prisoner appearing *pro se*, initiated this action seeking modification of his prison sentence, in addition to monetary damages by filing a Motion to File Writ of Mandamus and Nunc Pro Tunc. Doc. No. 1. In accordance with 28 U.S.C. § 636(b)(1)(B) and (C), the matter was referred to United States Magistrate Judge Gary M. Purcell. On December 20, 2019 Judge Purcell issued his Report and Recommendation. Therein Judge Purcell recommends that the matter be dismissed upon screening pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. The matter is currently before the Court on Petitioner's timely objection to the Report and Recommendation, which gives rise to the Court's obligation to undertake a de novo review of those portions of the Report and Recommendation to which Petitioner makes specific objection. Cognizant of its obligation and granting Plaintiff's filing the liberal construction mandated by *Haines v. Kerner*, 404 U.S. 519 (1972), the Court enters judgment in favor of the Defendants.

Plaintiff does not object to the merits of Judge Purcell's Report and Recommendation. Instead, he objects to an order issued on November 22, 2019 wherein Judge Purcell ordered Plaintiff to show cause for why Plaintiff failed to pay the \$5.00 filing fee or file an Application for Leave to Proceed *In Forma Pauperis* so he could proceed without prepaying the civil filing fees and costs. Doc. No. 10. In response, Plaintiff argued that his prison facility disbursed \$227.85 of Plaintiff's money to the Court on November 5, 2019 to cover his filing fees and costs. Doc. No. 11. Subsequently, Judge Purcell issued an order confirming the Court's receipt of Plaintiff's \$227.85 disbursement but explained that the money was applied to the balance Plaintiff owed in a previous lawsuit filed in this Court, *Morgan v. United States of America*, Case No. Civ-18-1080. Doc. No. 12. As such, Plaintiff's filing fee for the instant case remained outstanding. *Id.* In the same order, Judge Purcell provided Plaintiff with a final opportunity to show cause for why his petition should not be dismissed for failure to pay the filing fee. *Id.* Plaintiff responded, arguing that the Court had misapplied his funds. Doc. No. 13.

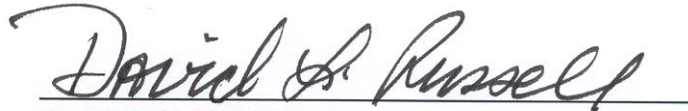
Shortly thereafter, Judge Purcell issued his Report and Recommendation. Doc. No. 14. He recommends that the Court construe Plaintiff's motion as a successive petition for habeas corpus relief under 28 U.S.C. § 2254 and that the Court dismiss the petition for lack of jurisdiction because Plaintiff failed to move in the appropriate court of appeals for an order authorizing the district court to consider his petition. *Id.* at 6. (citing 28 U.S.C. § 2244(b)). Judge Purcell further recommends dismissal of Plaintiff's constitutional claims pursuant to 42 U.S.C. § 1983 for failure to state a claim upon which relief may be granted. *Id.* at 8 (citing *Edwards v. Balisok*, 520 U.S. 641, 643 (1997)). Finally, Judge Purcell

recommends that the Court decline to assert supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(c)(3).

Concerning Plaintiff's \$227.85 disbursement, \$5.00 has been applied to the instant case. Plaintiff is therefore not in default; his filing fee has been paid in full.

Plaintiff did not, however, file an objection to the merits of the Report and Recommendation nor has he sought an extension of time in which to object to the merits. In fact, in his "Motion to File an Objection to Report," Plaintiff states that he agrees with the findings of the Court. Doc. No. 15, p. 1. Therefore, the Report and Recommendation of the Magistrate Judge is ADOPTED in its entirety and the petition herein is dismissed.

IT IS SO ORDERED this 24th day of January 2020.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE